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7                   Las Vegas, Nevada 89169  
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10                  *Attorneys for Defendants*

11                  **UNITED STATES DISTRICT COURT**

12                  **DISTRICT OF NEVADA**

13                  JASON KINZER, an individual,

14                  Case No.

15                  Plaintiff,

16                  v.

17                  ALLEGIANT AIR, LLC, a Nevada limited  
18                  liability company; and ALLEGIANT  
19                  TRAVEL CO. a Nevada corporation,

20                  **NOTICE OF REMOVAL**

21                  Defendants.

22                  Pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a), and 1446, Defendants Allegiant Air, LLC  
23                  and Allegiant Travel Co.<sup>1</sup> (“Defendants”) remove the action captioned as *Jason Kinzer v.*  
24                  *Allegiant Air, LLC et al.*, Case No. A-15-727524-C, which was filed in the Eighth Judicial  
25                  District Court in Clark County, Nevada, to the United States District Court for the District of  
26                  Nevada. Defendants support the removal as follows:

27                  1. On November 10, 2015, Plaintiff Jason Kinzer (“Plaintiff”) commenced an action  
28                  against Defendants in the Eighth Judicial District Court for Clark County, Nevada. Copies of the  
29                  Summons and Complaint are attached as **Exhibit 1**.

30                  

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31                  <sup>1</sup> Allegiant Travel Co. was not Plaintiff’s employer and avers that it is not a proper party to  
32                  this action.

1           2. Defendants remove this action to the United States District Court for the District of  
 2 Nevada pursuant to 28 U.S.C. §§ 1331 and 1441(a). This action is a civil action over which the  
 3 Court has original jurisdiction under 28 U.S.C. §§ 1331 and is one which may be removed to the  
 4 Court pursuant to the provisions of 28 U.S.C. § 1441.

5           3. Plaintiff's Complaint presents substantial questions of federal law, thereby  
 6 invoking the Court's original jurisdiction over actions presenting federal questions. Specifically,  
 7 The Complaint contains claims that arise under the laws of the United States. Plaintiff, for  
 8 example, alleges claims based on purported violations of the Federal Aviation Act (49 U.S.C. §  
 9 447), its implementing regulations (Title 14 of the Code of Federal Regulations), the FAA as  
 10 amended in the Airline Deregulation Act (49 U.S.C. § 41713), and the Wendell H. Ford Aviation  
 11 Investment Act of the 21st Century (49 U.S.C. § 42121(a)).

12          4. Further, the Court has original jurisdiction over this action pursuant to 28 U.S.C. §  
 13 1332. Defendants are citizens of Nevada, Plaintiff is a citizen of Florida, and the amount in  
 14 controversy exceeds \$75,000.00.<sup>2</sup> See 28 U.S.C. § 1332.

15          5. To the extent Plaintiff has stated other claims arising under state law, such claims  
 16 are properly before the Court based on the Court's supplemental jurisdiction. 28 U.S.C. §§ 1337  
 17 and 1441(a).

18          6. Venue in the United States District Court for the District of Nevada is proper under  
 19 28 U.S.C. §§ 1331 and 1441(a).

20          7. This Notice of Removal has been filed within thirty days of Defendants' receipt of  
 21 the Summons and Complaint, and is therefore timely under 28 U.S.C. § 1446(b).

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25          2. Prior to serving the Summons and Complaint on Defendants, Plaintiff demanded  
 26 \$3,000,000.00 to resolve this dispute. See Declaration of Laura Overton, attached as **Exhibit 2**.  
 27 In addition, Plaintiff received a salary of \$120,000.00 per year at the time of his termination. *Id.* ¶  
 28 3. Further, in his Complaint, Plaintiff seeks damages for "loss of income, humiliation,  
 29 embarrassment, loss of reputation as a pilot, loss of his ability to find similar employment as a  
 30 pilot or employee in the aviation industry, and probably in other fields of employment as well."  
**Exhibit 1**, Complaint ¶ 33. Under such circumstances, the damages threshold for diversity  
 31 jurisdiction is easily satisfied.

8. As required by 28 U.S.C. § 1446(d), Defendants will give notice of this removal to Plaintiff's counsel.

9. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal will also be filed with Nevada's Eighth Judicial District Court for Clark County.

Dated this 7th day of December, 2015.

JACKSON LEWIS P.C.

/s/ Steven C. Anderson  
Veronica Arechederra Hall, Bar No. 5855  
Steven C. Anderson, Bar No. 11901  
3800 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 7th day of October, 2015, I caused to be served via the Court's CM/ECF Filing, a true and correct copy of the above foregoing **NOTICE OF REMOVAL** properly addressed to the following:

Michael A. Urban  
Sean W. McDonald  
THE URBAN LAW FIRM  
4270 S. Decatur Blvd., Ste. A-9  
Las Vegas, Nevada 89103

*Attorneys for Plaintiff*

/s/ Emily Santiago  
Employee of Jackson Lewis P.C.

# EXHIBIT 1

# EXHIBIT 1

1           SUMM  
2 MICHAEL J. PANGIA, ESQ.  
3 D.C. Bar No. 967182

2 (*Pro hac vice* admission pending under SCR 42)  
3 **THE PANGIA LAW GROUP**  
4 1717 N St NW, Suite 300  
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9           **THE URBAN LAW FIRM**  
10 MICHAEL A. URBAN, Nevada Bar No. 3875  
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16 murban@theurbanlawfirm.com  
17 smcdonald@theurbanlawfirm.com  
*Counsel for Plaintiff*

18           **DISTRICT COURT**

19           **CLARK COUNTY, NEVADA**

20           JASON KINZER, an individual;

21           Case No.: A-15-727524-C

22           Plaintiff,

23           Dept. No.: XV

24           vs.

25           ALLEGIANT AIR, LLC, a Nevada limited  
26 liability company; and ALLEGIANT TRAVEL  
27 CO. a Nevada corporation,

28           Defendants.

29           **SUMMONS—CIVIL**

30           **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
31 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE  
32 INFORMATION BELOW.**

33           **TO THE DEFENDANTS(S):** A civil Complaint has been filed by the Plaintiff against you for relief  
34 set forth in the Complaint.

35           1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you,  
36 exclusive of the day of service, you must do the following:

- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
  - b. Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

## **CLERK OF THE COURT**

By: WALTER ABREGO-BONILL  
Deputy Clerk  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155



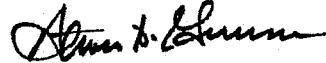
Submitted by:

## THE URBAN LAW FIRM

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D.C. Bar No. 967182  
(*Pro hac vice* admission pending under SCR 42)  
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CLERK OF THE COURT

6 **THE URBAN LAW FIRM**  
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10 *Counsel for Plaintiff*

11  
12 **EIGHTH JUDICIAL DISTRICT COURT**

13  
14 **CLARK COUNTY, NEVADA**

15 JASON KINZER, an individual;

16 Case No.: A-15-727524-C

Plaintiff,

17 Dept. No.: XV

vs.

18 **DEMAND FOR JURY TRIAL**

19 ALLEGIANT AIR, LLC, a Nevada limited  
liability company; and ALLEGIANT TRAVEL  
CO, a Nevada corporation,

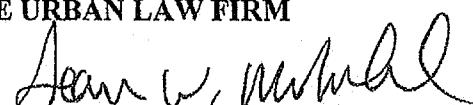
Defendants.

20 TO: THE CLERK OF THE ABOVE-ENTITLED COURT; and  
TO: THE ABOVE LISTED DEFENDANTS

21 The Plaintiff hereby demands that a trial of the above-entitled action be heard before a jury.

22 Dated this 13<sup>th</sup> day of November, 2015.

**THE URBAN LAW FIRM**

23 By:   
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*Alma S. Lamm*  
CLERK OF THE COURT

1 COMP  
2 MICHAEL J. PANGIA, ESQ.  
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10 *Counsel for Plaintiff*

11

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 JASON KINZER, an individual; Case No.: A-15-727524-C  
15 Plaintiff, Dept. No.: XV

16 vs.

17 ALLEGIANT AIR, LLC, a Nevada limited  
liability company; and ALLEGIANT TRAVEL  
18 CO, a Nevada corporation,

19 Defendants.

20 Serve:

21 Scott Sheldon,  
22 Registered Agent  
1201 N Town Center Drive  
23 Las Vegas, NV 89144

24 Comes now, James Kinzer, by and through undersigned counsel, and brings this action  
25 against the defendants, Allegiant Air LLC, an operating subdivision of Allegiant Travel Co.  
26 (hereinafter collectively as "defendant," "Allegiant Air," or "Allegiant"), and alleges as follows:  
27  
28

1     **I.     THE PARTIES**

2         1.     The plaintiff, Jason Kinzer (hereinafter "Captain Kinzer"), is a citizen and  
3     resident of the State of Florida, and at all times relevant was hired and trained by the defendant,  
4     Allegiant Air, in the State of Nevada to act as pilot in command of its aircraft.

5         2.     Defendant, Allegiant Air, LLC, is a limited liability company organized and  
6     existing under the laws of the State of Nevada. Defendant Allegiant Travel Co. is the parent  
7     company of Allegiant Air, LLC, is a corporation organized and existing pursuant to the laws of  
8     the State of Nevada. Both defendants have its principal place of business located in Clark  
9     County, Nevada, and this court has jurisdiction over the subject matter and parties thereto.

10      **II.    GENERAL ALLEGATIONS**

11         3.     At all times relevant, Allegiant Air is a common carrier by air of passengers for  
12     hire and holds itself out to the general public as a provider of air transportation to and from cities  
13     in the United States, including Las Vegas, Nevada and St. Petersburg, Florida.

14         4.     At all times relevant, Allegiant Air holds a certificate for which it applied for and  
15     was issued by the Federal Aviation Administration (hereinafter FAA) for the carriage of  
16     passengers by air in accordance with the regulations mandated by 14 Code of Federal  
17     Regulations, Part 121 (hereinafter Part 121) and was obligated to operate its aircraft in the  
18     carriage of passengers for hire in accordance with said regulations and a high degree of care with  
19     which it is charged as a common carrier.

20         5.     At all times relevant, the defendant, Allegiant Air, is by regulation obligated to  
21     conduct operations in accordance with the Operation Specifications for which it sought and was  
22     approved by the FAA, as required by Part 121.

23         6.     The Federal Aviation Regulations with which Allegiant Air was to comply as well  
24     as its obligation as a common carrier for hire required its operations to be conducted with a high  
25     degree of care.

26         7.     At all times relevant, the defendant, Allegiant Air leased and operated a  
27     McDonnell Douglas model MD-80 aircraft, registration No. N869GA (hereinafter "subject  
28

1 aircraft"), and was using it for the carriage of passengers for hire and was required to comply  
2 with said Part 121 in the operation of subject aircraft.

3       8. At all times relevant, the plaintiff held a valid Airline Transport Certificate issued  
4 by the FAA with appropriate rating that allowed him to act as pilot in command of the subject  
5 aircraft, and he was entrusted by the defendant to act as pilot in command of the subject aircraft.

6       9. On June 8, 2015, the defendant, Allegiant Air, assigned or designated the plaintiff  
7 to act as pilot in command of the subject aircraft in order to carry fare paying passengers from St.  
8 Petersburg, Florida to Hagerstown, Maryland on a flight designated as Flight No. 864.

9       10. The defendant, Allegiant Air, in so assigning the plaintiff the position of pilot in  
10 command of the subject flight, was obligated to make all reasonable assurances as mandated by  
11 Part 121 to determine that the plaintiff, Captain Kinzer, was fully qualified and trained as  
12 required under Part 121 and its FAA-approved Operations Specifications and expected Captain  
13 Kinzer to carry out his responsibilities both under Part 121 and the applicable General Operating  
14 and Flight Rules contained in 14 Code of Federal Regulations, Part 91.

15       11. The General Operating and Flight Rules, particularly 14 Code of Federal  
16 Regulations, Part 91.3, at all times relevant, mandated Captain Kinzer and the defendant,  
17 Allegiant Air, that he was to be directly responsible for, and the final authority as to, the  
18 operation of the subject aircraft on said Flight No. 864.

19       12. At all times relevant, the defendant, Allegiant Air, was responsible and obligated  
20 under the Federal Aviation Regulations, particularly 14 C.F.R. § 121.533(d), to assure that its  
21 pilots in command, including the plaintiff on Flight No. 864, remain responsible for the safety of  
22 the passengers, crewmembers and the airplane.

23       13. At all times relevant, the defendant, Allegiant Air, was obligated and required to  
24 assure that the operation of its aircraft, including the subject aircraft, was done in accordance  
25 with the FAA-approved General Operation Manual and in the manner in which it periodically  
26 trained its pilots in the simulator and in addition to its duty to exercise a high degree of care, all  
27 of which mandated the evacuation of an aircraft in the event of a fire or possibility of a fire or  
28 any condition that might possibly affect the health and safety of the passengers and crew.

1       14. At all times relevant, the defendant, Allegiant Air, was obligated and responsible  
2 to comply with the Federal Aviation Regulations, particularly 14 C.F.R. § 121.557(a), to assure  
3 that in emergency situations arising during flight that require immediate decision action, that the  
4 pilot in command, including the plaintiff, Captain Kinzer, may take any action that he considers  
5 necessary under the circumstances and may deviate from prescribed operation procedures to the  
6 extent required in the interest of the safety of his passengers and crew as well as the aircraft.

7       15. The Federal Aviation Regulations have the force and effect of law and, at no  
8 times relevant, did Allegiant Air apply for or receive a waiver or exemption from the regulations  
9 pertaining to the authority and responsibility of the pilot in command of its aircraft.

10      16. On June 8, 2015, at about 4:30 p.m. EDT (or 2030 Zulu), the subject aircraft  
11 operated by the defendant, Allegiant Air, as Flight No. 864 took off from St. Petersburg, Florida  
12 bound for Hagerstown, Maryland with Captain Kinzer assigned by the defendant as the pilot in  
13 command, along with a first officer, four cabin crewmembers and one hundred and forty-one  
14 (141) fare paying passengers on board.

15      17. Shortly after takeoff, as the said flight was climbing to its Air Traffic Control  
16 assigned altitude and before it reached five thousand feet, one or more of the cabin crew reported  
17 to Captain Kinzer and the first officer that acrid smoke or chemical fumes from an undetectable  
18 source was emanating from the rear of the passenger cabin and that it was being detected and  
19 inhaled by the passengers as well.

20      18. Captain Kinzer, in accordance with his regulatory duty and his common law  
21 obligation to provide a high degree of care for the safety of his passengers, declared an  
22 emergency to Air Traffic Control and returned for a landing to the St. Petersburg airport, which  
23 was still the closest useable airport to his position.

24      19. After landing and clearing the active runway, Captain Kinzer advised the air  
25 traffic ground controller that Flight 864 was going to stop where they were and, having been met  
26 at that location by the vehicles and personnel of the St Petersburg Airport Crash/Fire Rescue,  
27 (hereinafter "Fire Rescue"), in order to have the Fire Rescue personnel check out the aircraft  
28 before proceeding to the terminal. The air traffic ground controller asked the Fire Rescue

1 personnel if they copied Flight 864, to which they answered in the affirmative. The Fire Rescue  
2 personnel asked Flight 864, "...what do you need us to check out?" to which the cockpit crew  
3 responded that the flight attendants reported to them a "burning smell" immediately after they  
4 departed and asked Fire Rescue if they could see any smoke or scorching. After further  
5 checking, Fire Rescue reported to Captain Kinzer and his First Officer, "I'm showing some  
6 smoke on your No. 1 engine" and urged the crew to shut it down.

7       20. Captain Kinzer and his First Officer shut down the engines and the First Officer  
8 proceeded to discharge the on board engine fire extinguisher into the engine

9       21. Captain Kinzer and the First Officer checked with the cabin crew to learn that the  
10 acrid burning smell was not resolved and, for the safety of his passengers and crew and in  
11 accordance with his training and responsibility, ordered the cabin crew to prepare for an  
12 evacuation and notified the air traffic ground controller of that intention.

13       22. After Flight 864 reported to the air traffic ground controller of the decision to  
14 evacuate, a person who did not identify himself or his authority, over the air traffic control  
15 frequency, commanded the cockpit crew to "hold off on your evacuation." The air traffic  
16 controller admonished the persons on the frequency that they must identify themselves when  
17 using the air traffic control frequency to which there was no response. Captain Kinzer requested  
18 an identification of the person making this command to which a response from the unidentified  
19 person was a repeat of the command, "I'm telling you not to evacuate yet," without giving the  
20 source of authority or reason to make such a command.

21       23. After approximately another minute passed, Captain Kinzer asked the unidentified  
22 person for the reason why evacuation was being held off and that "We need an answer, please."  
23 The air traffic ground controller asked Fire Rescue, "Did you copy that?" to which no one  
24 responded. The air traffic ground controller interceded and repeated the request to the unknown  
25 caller that Flight 864 needed to know why evacuation was to be delayed to which no identifiable  
26 response, reason or authority was given. A true and correct copy of the pertinent  
27 communications over the Air Traffic Ground Control frequency is annexed hereto and made a  
28 part hereof as **Exhibit 1**.

1       24. In compliance with the Federal Aviation Regulations, particularly 14 C.F.R. §  
2 121.417(4), Allegiant Air was obligated in the training of its pilots to review and discuss  
3 previous aircraft accidents and incidents pertaining to actual emergency situations. Among those  
4 situations reviewed were instances where a delay in landing or evacuation, particularly in the  
5 presence of smoke, caused serious injury and death.

6       25. The unauthorized command over the air traffic control frequency, given without  
7 adequate identification, citation of authority or reason, attempting to usurp the legal final  
8 command responsibility of Captain Kinzer, particularly after an emergency landing due to smoke  
9 in the passenger cabin from an unknown source and report of smoke coming out of one of the  
10 engines, caused additional alarm on the part of Captain Kinzer for the safety of his passengers  
11 and crew and, with the concurrence of his First Officer, ordered an evacuation in accordance  
12 with the duty and responsibility imposed upon him by law, his training and the high degree of  
13 care with which he was charged.

14       26. While personally checking the passenger cabin to assure himself that the  
15 passengers were safely evacuated, Captain Kinzer noted that a passenger was still on board  
16 saying, "Help me, I cannot walk." He was a paraplegic. Captain Kinzer lifted the disabled  
17 passenger out of his seat, and with the assistance of one of the flight attendants, carried the  
18 passenger to the exit where he could be safely evacuated. Captain Kinzer then rechecked the  
19 cabin to ensure personally that all souls were evacuated before he left the plane himself.

20       27. Because Captain Kinzer ordered the said evacuation, Allegiant Air corporate  
21 management accused him of not taking into primary account "the Company's assets, ground  
22 equipment, fuel and the personal time of our employees and customers" above his command  
23 responsibility of caring for the safety of his passengers and crew—essentially not placing  
24 company profits above safety—and, for that reason, fired him. Attached hereto and incorporated  
25 by reference as **Exhibit 2** is a true copy of the Allegiant Air termination letter.

26       28. At all times relevant, Captain Kinzer has had a perfectly clean record with no  
27 violations, sanctions, warnings or reprimands of any kind, and was determined to be rated and  
28

1 certificated by the Federal Aviation Administration and competent to act as pilot in command of  
2 large aircraft carrying passengers and cargo for hire.

3 **FIRST CAUSE OF ACTION**

4 **FOR WRONGFUL AND TORTIOUS TERMINATION OF EMPLOYMENT**

5 29. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each and every  
6 of the above allegations as though fully set forth herein.

7 30. Allegiant Air wrongfully and maliciously fired Captain Kinzer for not placing  
8 monetary concern such as company assets, cost of rescheduling, fuel and cost of company  
9 personnel in his decision, above his command responsibility for the safety of his passengers and  
10 crew as required by law the high degree of due care he and the company was supposed to  
11 maintain.

12 31. The acts and omissions of the defendant, Allegiant Air, toward Captain Kinzer are  
13 retaliatory in that it essentially demanded of the plaintiff, and others similarly situated, to  
14 participate in an activity, policy and/or practice of his employer which violate the Federal  
15 Aviation Regulations and potentially endanger the lives and limbs of his passengers and the  
16 general public.

17 32. The acts and omissions of the defendant, Allegiant Air, toward Captain Kinzer is  
18 deleterious and contrary to and amounts to a reckless disregard of the public policy of all states,  
19 including the State of Nevada, particularly by reason of the application of the Federal Aviation  
20 Regulations that establish a uniform public policy to be recognized by all states concerning  
21 operation of aircraft, unauthorized use of air traffic control frequencies and air transportation of  
22 fare paying passengers.

23 33. As a direct and proximate cause of the wrongful and tortious conduct on the part  
24 of the defendant, Allegiant Air, the plaintiff suffered and will continue to suffer, among other  
25 things, compensatory loss of income, humiliation, embarrassment, loss of reputation as a pilot,  
26 loss of his ability to find similar employment as a pilot or employee in the aviation industry, and  
27 probably in other fields of employment as well, and has been damaged in an amount in excess of  
28 TEN THOUSAND DOLLARS (\$10,000.00), exclusive of interest and costs.

**SECOND CAUSE OF ACTION**  
**FOR DEFAMATION**

3           34. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each of the  
4 above allegations as though fully set forth herein.

5       35. The discharge letter (Exhibit 2), signed by Mark Grock, Allegiant's Chief Pilot, as  
6 well as other writings and emails created by Allegiant, contain false and defamatory statements  
7 concerning Captain Kinzer.

8       36. By providing a copy of the discharge letter to Greg Baden, who was not  
9 privileged to receive the same, as well as retaining a copy in Captain Kinzer's personnel file and  
10 by not controlling access to this file to exclusively those who had a legitimate management  
11 reason to review the file, there was unprivileged publications to third parties. In addition to the  
12 discharge letter, Allegiant Air management, agents and employees have made other unprivileged  
13 publication to third parties of false and defamatory statements concerning Captain Kinzer.

14       37. The publication to Mr. Baden and to Captain Kinzer's file, as well as to others,  
15 was at least negligent and may have in fact been an intentional attempt to send a message to  
16 other Allegiant pilots concerning an unlawful company protocol on smoke in the cabin by  
17 Allegiant management.

18       38. As a result of the publication to Captain Kinzer's personnel file, as well as the  
19 comments made to others, Captain Kinzer has been blackballed by the aviation industry and is  
20 unable to find employment in the aviation field and difficulty in finding employment, aside from  
21 possibly self-employment, in other areas as well.

22       39. As a direct and proximate cause of the wrongful and tortious conduct on the part  
23 of the defendant, Allegiant Air, the plaintiff suffered and will continue to suffer, among other  
24 things, compensatory loss of income, humiliation, embarrassment, loss of reputation as a pilot,  
25 loss of his ability to find similar employment as a pilot or employee in the aviation industry, and  
26 probably in other fields of employment as well, and has been damaged in an amount in excess of  
27 TEN THOUSAND DOLLARS (\$10,000.00), exclusive of interest and costs.

### **THIRD CAUSE OF ACTION**

## **FOR INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

3           40. The plaintiff, Captain Kinzer, repeats Plaintiffs reallege and reaver the foregoing  
4 paragraphs as if fully rewritten here.

5           41. At all times relevant, defendant, Allegiant Air, engaged in extreme and  
6 outrageous conduct in the following ways, including but not limited to:

7           a.       Taking advantage of the position of trust and confidence given to it by the  
8                   FAA and placing its own financial benefit above that of fare paying  
9                   passengers;

10                   b.         Failing to abide by FAA Rules and Regulations and permitting Captain  
11                   Kinzer to operate its aircraft in the best interest of his passengers; and

12                   c.     Attempting to send a warning message to the line pilots of Allegiant Air  
13                   by firing Captain Kinzer without cause or indeed any legal justification.

14           42. At all times relevant, Defendant Allegiant Air's conduct was recklessly  
15 indifferent to the likelihood that its actions would cause severe emotional distress to the Plaintiff,  
16 and caused and will continue to cause severe emotional distress to the Plaintiff.

#### **FOURTH CAUSE OF ACTION**

**FOR PUNITIVE OR EXEMPLARY DAMAGES**

19           43. The plaintiff, Captain Kinzer, repeats, realleges and incorporates each of the  
20 above allegations as though fully set forth herein.

21       44. The acts and omissions on the part of the defendant, Allegiant Air, towards  
22 Captain Kinzer were not only malicious, retaliatory and in a reckless disregard of his rights and  
23 responsibilities, but also a reckless disregard of the Federal Aviation Regulations and the high  
24 degree of a duty of due care with which it is charged for the safety of the public. Moreover, it  
25 sends a dangerous warning message to other Allegiant Air pilots to place corporate financial  
26 concerns and profits as a priority over the safety of the passengers, crew and the general public in  
27 times of emergency or else jeopardize their continued employment with this defendant.

1       45. In the interest of safety and welfare of the public, both flying and on the ground,  
2 plaintiff demands that punitive damages be awarded in order to deter future similar conduct on  
3 the part of this defendant and others similarly situated in an amount to be determined by the jury  
4 as appropriate under the law of the State of Nevada.

5 WHEREFORE, plaintiff demands judgment against the defendant in an amount in excess  
6 of TEN THOUSAND DOLLARS (\$10,000.00), to be determined by the jury, to compensate him  
7 for compensatory losses stated above and for punitive damages, together with appropriate  
8 interest and costs and for such other and further relief this Honorable Court may deem just and  
9 proper.

10 Dated this 10th day of November, 2015.

MICHAEL J. PANGIA, ESQ.  
D.C. Bar No. 967182  
*(Pro hac vice* admission pending under SCR 42)  
**THE PANGIA LAW GROUP**  
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*Counsel for Plaintiff*

# Exhibit “1”

FEDERAL AVIATION ADMINISTRATION

RE: ACCIDENT PIE/ATCT 0024

PIE/ATCT 0024  
38:00 to 45:00

THE FOLLOWING WAS TRANSCRIBED:  
FEDERAL AVIATION ADMINISTRATION  
ST. PETE/CLEARWATER AIR TRAFFIC CONTROL TOWER

06-08-15  
2138:00 to 2145:00

No Court Reporter Present

CP REPORTING, LLC  
20006 North Cove Road, Suite 100  
Cornelius, NC 28031

(704) 682-0747

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PIE/ATCT 0024

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Radio transmissions in order of speakers:

864 - Allegiant Flight 864

GC - Ground Control

RF - Rescue and Fire (unable to determine which unit)

RF2 - Rescue and Fire Unit 2

1417Y - Cessna 1417Y

RF3 - Rescue and Fire Unite 3

N728RH - Beech 728 RH

Abbreviations:

FLIR - Forward Looking Infrared

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1 (2138:00)  
2 2138:26 864 Ground Allegiant 864 clearing  
3 on alpha  
4 2138:28 GC This is 864 Ground say  
5 intention  
6 2138:32 GC Yeah we're going to stop once  
7 we clear the runway and have  
8 the emergency equipment just  
9 check us out  
10 2138:38 GC This is 864 roger if you just  
11 want to round the corner then  
12 and stopped there  
13 2138:44 GC Okay uh we're actually going  
14 to stop right here and have  
15 them just check us out if you  
16 could  
17 2138:49 GC Allegiant 864 roger we'll do  
18 and the emergency vehicle did  
19 you copy that  
20 2138:54 RF Yeah, we copy  
21 2138:55 864 Roger  
22 2139:10 GC And emergency vehicles can you  
23 advise you're not clear 36  
24 right then correct  
25 2139:20 RF We're not clear 36 right

Page 4

1 2139:22 GC Okay let me know let me know  
2 as soon as you're clear runway  
3 36 right please  
4 2139:35 1417 Good afternoon Ground Cessna  
5 1417 Yankee any idea for  
6 landing  
7 2139:39 GC Number 1417 Yankee (inaudible)  
8 2139:42 1417 Yes sir with the activity I  
9 hear are we going to be able  
10 to take off this afternoon or  
11 everything going to be closed  
12 for a while?  
13 2139:47 GC 1417 Yankee and you may want  
14 to depart runway 4  
15 2139:54 1417 Okay we'll go ahead and fire  
16 up and call you back thanks  
17 2140:00 GC 17 Yankee roger  
18 2140:02 RF2 St. Pete Ground, ARFF2  
19 2140:03 GC RF 2 semi ground  
20 2140:05 RF2 Can I talk to the pilot on  
21 this channel or do you want me  
22 to move to the discreet  
23 channel  
24 2140:11 GC RF 2 and you can go ahead for  
25 right now if it becomes

Page 5

1                           lengthy I'll let you know  
2 2140:16 RF2           Copy RF 2 Allegiant Aircraft  
3                           what do you need us to check  
4                           out  
5 2140:24 864           All right the flight  
6                           attendants reported a burning  
7                           smell immediately after  
8                           departure so do you guys have  
9                           a way of checking to see  
10                          anything out of the ordinary  
11                          in the airplane do you see  
12                          smoke do you see any scorching  
13 2140:35 Unknown       Yeah there's fire  
14 2140:37 GC            Yeah we don't have any any  
15                          signs of that I'll swing  
16                          around your other side there,  
17                          starboard side and we'll do a  
18                          FLIR check on that side as  
19                          well  
20 2140:47 864           Okay thanks very much we'll be  
21                          standing by this frequency so  
22                          if you give us a clear we'll  
23                          taxi back to the gate  
24                          afterward  
25                          And is it better for you guys

Page 6

1 if we clean the airplane's  
2 configuration or do you -- is  
3 the flare better with the flap  
4 or the flaps (inaudible)  
5 deployed like this  
6 2041:05 RF I'm -- I'm showing some smoke  
7 on your number one engine  
8 2041:14 864 Verify you're showing smoke on  
9 the number one engine  
10 2041:16 RF That's affirmative -- if you  
11 want to shut number one down  
12 that's the pilot side  
13 2041:21 864 All right number one here we  
14 go  
15 2041:53 864 Tower Ground Allegiant 864  
16 we're going to be evacuating  
17 2041:58 GC Allegiant 864 roger okay and  
18 at that -- at that position  
19 correct  
20 2042:03 864 Yes right here we're going to  
21 be evacuating  
22 2042:05 RF 864 roger  
23 2042:07 Unknown 864 hold off on your  
24 evacuation please  
25 2042:13 864 Who said to hold off

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1 2042:15 Unknown Yes please hold off on your  
2 evacuation  
3 2042:16 864 Yes who is this  
4 2042:22 GC Be advised when you guys are  
5 making transmissions identify  
6 yourself first so everybody  
7 knows who's talking to who  
8 2042:29 864 Yeah Allegiant 864 who's  
9 telling us not to evacuate  
10 2042:34 Unknown Airport Command RF 2 I'm  
11 telling you not to evacuate  
12 yet  
13 2042:37 864 All right  
14 2043:01 864 Allegiant 864 why do you want  
15 us to hold  
16 2043:17 864 We need answer please why do  
17 you want us to hold on the  
18 evacuation  
19 2043:27 GC RF 2 Command safety ground did  
20 you copy Allegiant's  
21 transmission  
22 2043:36 GC Ops 1 are you on St. Pete  
23 ground  
24 2043:44 GC Okay are there any emergency  
25 vehicles any of the RF

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1                            vehicles on ground frequency  
2 2043:51    RF3            Affirmative RF 3 on  
3 2043:53    GC            Okay RF 3 on Allegiant 864 is  
4                            requesting why do you want  
5                            them to hold on the evacuation  
6                            they need an answer please  
7 2044:04    RF            RF 3 give me one second I'll  
8                            contact the man on the ground  
9 2044:16    N728RH        St. Pete Ground November 728  
10                          Romeo go  
11 2044:45    Unknown      (inaudible)  
12 2044:46    N728RH        St. Pete Ground November 728  
13                          Romeo Hotel  
14 2044:50    GC            Number 728 Romeo Hotel, St.  
15                          Pete Ground  
16 2044:53    N728RH        How much out there  
17                          I was in transition to the  
18                          landings am I going to be able  
19                          to do it  
20 2045:00    GC            November 728 Romeo roger and I  
21                          should be able to work that  
22                          out for you just -- are you  
23                          ready to taxi now  
24 2045:07    N728RH        I'd have to start off and then  
25                          I'll call you but I just

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5 2045:13 GC (inaudible) tower roger let me  
6 know when you're ready to taxi

7 WHEREUPON, at 2145:13, the transcription

8 ended.

9

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ACCIDENT FILE#ATCT 0024/  
Chaplin and Associates, Inc. 20006 North Cove Road, Suite 100, Cornelius, NC 28031

336-992-1954

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PIE/ATCT 0024

CERTIFICATION

I, Michael Lawrence, Notary Public in and for the County of Guilford, State of North Carolina at Large, do hereby certify:

That the hearing was taken before me and recorded by Stenomask, thereafter reduced to typewriting under my direct supervision, and the foregoing consecutively numbered pages are a complete and accurate record of all the testimony.

That the undersigned is not of kin, nor in anywise associated with any of the parties to said cause of action, nor their counsel, and that I am not interested in the event(s) thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this  
the 4th day of November, 2015.

CP REPORTING, LLC

Notary No.: 201315500163      20006 North Cove Road, Suite 200  
    Cornelius, NC 28031

# Exhibit “2”



July 23, 2015

Jason Kinzer  
[REDACTED]  
[REDACTED] FL 3 [REDACTED]

Dear Captain Kinzer,

This letter is to notify you that we have concluded our investigation of your conduct as Captain of Allegiant Flight 864 on June 8, 2015.

As an Allegiant Captain, you are considered the "on-scene commander" and should always demonstrate professionalism, maturity and concern for our customers and your coworkers during their daily work assignments. You do this by operating each aircraft safely, smoothly and efficiently and striving to preserve the Company's assets, aircraft, ground equipment, fuel and the personal time of our employees and customers.

You failed to exhibit these behaviors during Flight 864. You ordered an evacuation that was entirely unwarranted and, as a result, your conduct and decision-making on June 8, compromised the safety of your crew and your passengers and led directly to the injuries. Furthermore, during a review of the event and in subsequent conversations you have repeatedly insisted that you made a good decision to evacuate the aircraft and, if faced with a similar situation, you would follow the same course of action.

It is for these reasons that your employment with Allegiant is terminated effective immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "M. G. C." or a similar variation.

Mark Grock  
System Chief Pilot  
Allegiant Air

cc. Greg Baden, VP Flight Operations



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# **EXHIBIT 2**

**EXHIBIT 2**

**DECLARATION OF LAURA OVERTON**

Laura Overton declares as follows under penalty of perjury.

1. I am over the age of 18 and competent to attest to the facts stated in this Declaration. I make this Declaration in support of Defendants' Notice of Removal filed in the action entitled *Jason Kinzer v. Allegiant Air, LLC, et al.* I am familiar with the facts and circumstances described herein. If called on to do so, I could and would testify as to their truth.

2. I am General Counsel and Vice President of Legal Affairs to Allegiant Travel Company. In my capacity as General Counsel I have become familiar with facts and circumstances relevant to Plaintiff Jason Kinzer's ("Plaintiff") Complaint.

3. At the time Plaintiff was separated from employment with Allegiant Air, LLC, he received a yearly salary of \$120,000.00. Prior to Plaintiff's service of the Summons and Complaint on Defendants, Plaintiff's representative contacted me and demanded \$3,000,000.00 to resolve this dispute.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE  
AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Executed: December 3, 2015.

By: Laura Overton  
Laura Overton